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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,845	07/07/2003	Molly Denise Reinman	171p-Reinmann	6927
7590	10/12/2005		EXAMINER	
Barber Legal PO Box 16220 Golden, CO 80402-6044			SEMBER, THOMAS M	
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 10/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/612,845	Applicant(s) REINMAN, MOLLY DENISE	
	Examiner Thomas M. Sember	Art Unit 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 8-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2,4-7 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>07/07/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of the invention of the embodiment of species 4 (claims 1-7 and 16) in the reply filed on July 27, 2005 is acknowledged.

It appears that applicant has indicated that all claims 1-16 of the elected invention also read on the elected embodiment. The examiner disagrees. The examiner asserts that claims 1-7 and 16 read on the elected embodiment of Figure 4. Claims 8-15 recite structural features only depicted or described in the other non-elected embodiments.

Furthermore applicant traverses the rejection based on independent claim 2 being generic and dependent claims 3-16 depending thereon. However, just because claim 2 is generic to all the species doesn't mean that the dependent claims are also generic. Clearly, dependent claims 8-15 read on different non-elected embodiments and therefore the election is deemed proper and final.

Claim Rejections - 35 USC § 112

1. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are between the solar cell, light, battery, hollow ornament and shepherd's hook.

2. Claims 2-7 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are how the free-standing support is structurally related to the solar cell, light, battery and memorial ornament.

3. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 3 is indefinite because it is unclear if the "free-standing shepherd's hook support" is an additional support or is just the "free-standing support" claimed in claim 2 further defined. Furthermore, the word "means" is preceded by the word(s) "by" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 2875

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 2, 4-5, 7 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Arcadia et al. Arcadia et al discloses a solar powered memorial comprising: a free-standing support 58, a solar-electricity cell 40, a rechargeable battery 84, a light 70, the solar-electricity cell, battery and light being operatively connected, and a memorial ornament 75 illuminated by the light.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 2, 4-5, 7 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Wenzel et al. Wenzel et al discloses a solar powered memorial comprising: a free-standing support 45, a solar-electricity cell 65, a rechargeable battery (see column 5, lines 1-5), a light 60, the solar-electricity cell, battery and light being operatively connected, and a memorial ornament 30 illuminated by the light.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over (Arcadia et al or Wenzel et al). (Arcadia et al or Wenzel et al) discloses the claimed invention except for the teaching that the memorial is an angel. Tang teaches an illuminated angel. It would have been obvious to one skilled in the art at the time the invention was made to substitute an angel for the religious figures or memorials of (Arcadia et al or Wenzel et al) in order to provide an alternatively aesthetically pleasing memorial.

Allowable Subject Matter

7. Claims 1 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

8. Claim 3 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.


Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. discloses ornaments similar to applicant's invention. Moran, III or Chacham et al teach shepherd hooks similar to applicant's invention. Crawford et al teaches a angel lit memorial.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas M. Sember whose telephone number is 571-272-2381. The examiner can normally be reached on M-F 8 A.M- 5.30 p.m. first Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571-272-2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thomas M Sember
Primary Examiner
Art Unit 2875
